
Stipulated Award

NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 03-00946

Margaret Bercik FAO Mark and Margaret Bercik
Margaret Bercik FAO Brian and Margaret M. Bercik
Margaret M. Bercik FAO Margaret Jones and Margaret Bercik
Margaret M. Bercik FAO Lynn Cooper and Margaret Bercik
Margaret M. Bercik and Peter Bercik JTWROS

Names of the Respondents

Hearing Site: Baltimore, Maryland

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Thomas M. Gray

Nature of the Dispute: Customer vs. Member and Associated Person.

REPRESENTATION OF PARTIES

For Margaret Bercik FAO Mark and Margaret Bercik, Margaret Bercik FAO Brian and Margaret M. Bercik, Margaret M. Bercik FAO Margaret Jones and Margaret Bercik, Margaret M. Bercik FAO Lynn Cooper and Margaret Bercik and Margaret M. Bercik and Peter Bercik JTWROS, hereinafter collectively referred to as "Claimants": Robert Weiss, Esq. and Stephen D. Murakami, Esq., Hooper & Weiss, LLC, Jericho, New York.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Thomas M. Gray ("Gray") hereinafter referred to as "Respondents": Dennis K. Egan, Esq., Butzel Long, Bloomfield Hills, Michigan.

CASE INFORMATION

Statement of Claim filed on or about: February 3, 2003.

Claimants signed the Uniform Submission Agreement: January 23, 2003.

Statement of Answer filed by Respondents on or about: May 6, 2003..

Respondent Merrill Lynch signed the Uniform Submission Agreement: March 31, 2003.

Respondent Gray signed the Uniform Submission Agreement: April 23, 2003.

Respondent G. Powell signed the Uniform Submission Agreement: June 10, 2005.

CASE SUMMARY

Claimants asserted the following causes of action: 1) unsuitability; 2) overconcentration; 3) common law fraud; 4) common law negligence; 5) violation of Section 10(b) and Rule 10(b-5); 6) failure to supervise; and, 7) control person liability. The causes of action relate to Respondents' advice to Claimants to invest the proceeds from the sale of a house in various, unspecified mutual funds.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$115,000.00, pre-and post-award interest at the legal rate, attorneys' fees, punitive damages, costs and such other and further relief as the Panel deemed just and proper.

Respondents requested that the Statement of Claim be dismissed in its entirety, assess all costs and forum fees against Claimant and an award of such other, further and different relief as this Panel deemed appropriate. In addition, Respondents' requested that the Panel enter an order expunging this matter from the NASD Central Registration Depository (the "CRD") record of Respondent Gray.

OTHER ISSUES CONSIDERED AND DECIDED

On or about March 9, 2005, the parties notified NASD Dispute Resolution that this matter had settled and that the parties would be submitting a proposed Stipulated Award.

On or about August 8, 2005, the parties submitted to NASD Dispute Resolution a proposed Stipulated Award with a request for expungement of the NASD CRD record of Respondent Gray.

On or about August 10, 2005, the Panel granted Respondent Gray's request for expungement of his NASD CRD record.

The parties have agreed that the Stipulated Award in this matter may be entered in counterpart copies or that a signed handwritten Stipulated Award may be entered.

AWARD

The parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for an entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

The parties have amicably resolved their differences and have requested this Stipulated Award.

All Claimants' claims against Respondents are dismissed in their entirety, with prejudice.

The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Gray's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Gray must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Any and all claims for relief not specifically addressed herein, including Claimants' requests for attorney's fees and punitive damages, are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 300.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Respondent Merrill Lynch is a party to this dispute and was a member of NASD at the time the following fees were assessed:

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 2,750.00</u>
Total Member Fees	= \$ 5,200.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No adjournments were granted for these proceedings for which fees were assessed.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

Cancellation fees were assessed in this matter:

March 10 – 11, 2005, settled by parties = \$ 300.00

The Panel has waived \$150.00 of the cancellation fee.

The Panel has assessed \$150.00 of the cancellation fee jointly and severally to Respondents.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

No injunctive relief fees were incurred during this proceeding.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with the Panel @ \$1,125.00	= \$1,125.00
Pre-hearing conference: November 12, 2003 1 session	
Total Forum Fees	= \$1,125.00

The Panel has waived \$562.00 of the forum fees to Claimants..

The Panel has assessed \$562.00 of the forum fees jointly and severally to Respondents.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during this proceeding.

Fee Summary

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Total Fees	= \$ 300.00
Less payments	= \$ 300.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Merrill Lynch is solely liable for:

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

Cancellation Fee	= \$ 150.00
Forum Fees	= \$ 562.50
Total Fees	= \$ 712.50
Less payments	= \$ 712.50
Balance Due NASD Dispute Resolution	= \$ 0.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Joseph A. Kenary, Esq. - Public Arbitrator, Presiding Chairperson
Frederick M. Price - Public Arbitrator
Cynthia R. Pinkney - Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
Joseph A. Kenary, Esq.
Public Arbitrator, Presiding Chairperson

12/11/06
Signature Date

/s/
Frederick M. Price
Public Arbitrator

12/11/06
Signature Date

/s/
Cynthia R. Pinkney
Non-Public Arbitrator

12/11/06
Signature Date

12/12/06
Date of Service (For NASD Dispute Resolution office use only)

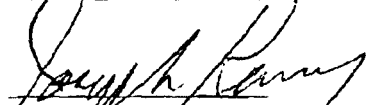
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Non-Public Arbitrator

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Public Arbitrator, Presiding Chairperson

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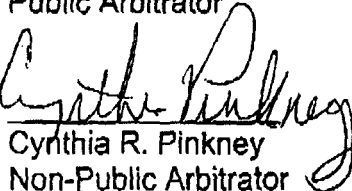
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